

LOHIER, Circuit Judge, concurring:

I thank my panel colleagues for addressing many of my concerns in this case. In particular, today's majority opinion makes clear that district courts assessing a proposed consent decree should consider principally four factors: "(1) the basic legality of the decree; (2) whether the terms of the decree, including its enforcement mechanism, are clear; (3) whether the consent decree reflects a resolution of the actual claims in the complaint; and (4) whether the consent decree is tainted by improper collusion or corruption of some kind." Majority Op., ante, at 20-21 (citations omitted). I write separately to make two more observations.

First, in my view, the "fair and reasonable" standard for assessing the appropriateness of monetary relief (as opposed to injunctive relief) involves a straightforward analysis of only the four factors identified by the majority and described above. If all four factors are satisfied, the perceived modesty of monetary penalties proposed in a consent decree is not a reason to reject the decree.

Second, I would be inclined to reverse on the factual record before us and direct the District Court to enter the consent decree. It does not appear that any additional facts are needed to determine that the proposed decree is "fair and reasonable" and does not disserve the public interest. Nor, to use

the words of the majority opinion's holding, is there a "substantial basis . . . for concluding" that further development of the record will show that the proposed terms of this decree are not fair, reasonable, and in the public interest. Under the circumstances, though, it does no harm to vacate and remand to permit the very able and distinguished District Judge to make that determination in the first instance.